

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Nanci E. Langley; and
Robert G. Taub

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Australian Postal Corporation–United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2012-2

ORDER CONCERNING AN ADDITIONAL INBOUND
MARKET DOMINANT MULTI-SERVICE
AGREEMENT WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued November 23, 2011)

I. INTRODUCTION

On October 14, 2011, the Postal Service filed a notice, pursuant to 39 CFR § 3010.40 *et seq.*, that it has entered into a bilateral agreement with Australian Postal Corporation (Australia Post), which it seeks to include in the Inbound Market Dominant

Multi-Service Agreements with Foreign Postal Operators 1 product.¹ For the reasons discussed below, the Commission approves the request.

II. BACKGROUND

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and the Strategic Bilateral Agreement Between the United States Postal Service and Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement. The Commission has also approved the functionally equivalent HongKong Post Agreement and the China Post 2011 Agreement.²

The Postal Service filed the instant Agreement pursuant to 39 CFR §§ 3010.40 *et seq.* The Postal Service states that the proposed inbound market dominant rates are intended to become effective on January 1, 2012. *Id.* at 2. The Australia Post Agreement establishes new rates for inbound letter post items in place of default Universal Postal Union rates, as well as an ancillary service for delivery confirmation scanning for inbound letter post small packets. The Postal Service contends that the instant Agreement is functionally equivalent to several agreements included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. Notice at 7-8.

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, October 14, 2011 (Notice); see also Docket Nos. MC2010-35, R2010-5 and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

² See Docket No. R2011-4, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011 (Order No. 700); Docket No. R2011-7, Order Concerning an Additional Inbound [Market Dominant] Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011 (Order No. 871).

In support of its Notice, the Postal Service filed two attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal; and
- Attachment 2—a redacted copy of the Australia Post Agreement.

The Postal Service also provided a redacted version of the supporting financial documentation as a separate Excel file.

III. PROCEDURAL HISTORY

On October 20, 2011, the Commission issued Order No. 913 establishing the above-captioned proceeding, naming a Public Representative, and setting a date for filing comments.³ On October 27, 2011, the Public Representative filed comments.⁴ No other comments have been received.

IV. AUSTRALIA POST AGREEMENT

The Australia Post Agreement provides that it becomes effective after all regulatory approvals have been received, mutual notification of such approvals, and mutual agreement on an effective date. Notice, Attachment 2 at 1-2. The Agreement, however, may be terminated by either party on no less than 30 days' written notice. *Id.* at 3. The Postal Service and Australia Post, the postal operator for Australia, are parties to the Agreement. The portions of the Agreement at issue in this docket cover

³ Notice and Order Concerning Rate Adjustment for Bilateral Agreement with Australian Postal Corporation and Functionally Equivalent Negotiated Service Agreement, October 20, 2011 (Order No. 913).

⁴ Public Representative Comments on Postal Service Notice Concerning Rate Adjustment for Bilateral Agreement with Australian Postal Corporation and Functionally Equivalent Negotiated Service Agreement, October 27, 2011 (PR Comments).

inbound letter post⁵ in the form of Letters, Flats, Small Packets, Registered Mail, and Small Packets with Delivery Scanning. *See id.* at 9.

Requirements under part 3010. The Postal Service states that the expected financial performance of the Australia Post Agreement is set out in the Excel file included with the filing. Notice at 1-2. It contends that operational improvements should enhance mail efficiency and other functions for letter post items under the Agreement. *Id.* at 4.

The Postal Service asserts that the instant Agreement should not cause unreasonable harm in the marketplace. The Postal Service is unaware of any significant competition in this market. *Id.* at 4-5.

Under 39 CFR § 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service states that it intends to report information on this Agreement through its Annual Compliance Report. While indicating its willingness to provide information on mailflows within the annual compliance review process, the Postal Service proposes no special data collection plan for this Agreement. With respect to performance measurement, it requests that the Commission exempt this Agreement from separate reporting requirements under 39 CFR § 3055.3 and establish a standing exemption to performance reporting requirements for all contracts added to the product Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1. *Id.* at 6, 10.

The Postal Service advances reasons why the Agreement is functionally equivalent to previously filed agreements.⁶ It asserts that the instant Agreement fits within the Mail Classification Schedule language for the Inbound Multi-Service Agreements with the Foreign Postal Operators 1 product. Additionally, it states

⁵ Notice at 5-6. The Agreement also covers competitive products such as M-Bags, parcels, and Express Mail. *See* Docket No. CP2012-1.

⁶ *Id.* at 7-9. It cites the following orders: Order No. 549; Docket No. R2011-4, Order No. 700, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011; Docket No. R2011-7, Order No. 871, Order Concerning an Additional Inbound [Market Dominant] Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011. *See id.* at 1 n.1.

that the Australia Post Agreement includes similar terms and conditions, *e.g.*, is with a foreign postal operator, conforms to a common description, and relates to rates for letter post tendered from the postal operator's territory. *Id.* at 7-8.

The Postal Service identifies a specific term, Article 22, which refers to the duration of the Agreement, that distinguishes the instant Agreement from an existing China Post Agreement (Docket No. R2010-6). This distinction is the duration that the Agreement will be in effect. *Id.* at 8-9. The Postal Service contends that the instant Agreement is nonetheless functionally equivalent to existing agreements. *Id.* at 7-9.

V. COMMENTS

The Public Representative states that he has reviewed the Agreement and the financial model that were filed under seal. He states that the Agreement is likely to improve the financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service. PR Comments at 2. The Public Representative agrees that the instant Agreement's inbound rates represent an improvement over the default Universal Postal Union (UPU) terminal dues rates. In addition, the Public Representative concludes that the Australia Post Agreement is functionally equivalent to the China Post 2010 Agreement. *Id.*

VI. COMMISSION ANALYSIS

In Order No. 549, the Commission established the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and two functionally equivalent agreements. In its analysis of the market dominant product in that proceeding, the Commission reviewed the statutory requirements for inclusion of negotiated service agreements under this product.

Statutory responsibilities. The statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 CFR § 3010.40(a) are applicable to the instant Agreement and require the Commission to make a finding that the proposed market dominant negotiated service agreement must either (1) improve the net financial position of the

Postal Service (39 U.S.C. § 3622(c)(10)(A)(i)); or (2) enhance the performance of various operational functions (39 U.S.C. § 3622(c)(10)(A)(ii)). Additionally, the negotiated service agreement may not “cause unreasonable harm to the marketplace” (39 U.S.C. § 3622(c)(10)(B)) and “must be available on public and reasonable terms to similarly situated mailers.” 39 CFR § 3010.40(c).

Financial analysis. The Postal Service states that the negotiated rates in the bilateral agreement represent an improvement over the default rates set by the UPU. Notice at 1. Based upon the financial model, the Postal Service further states that the Agreement will improve the net financial position of the Postal Service and therefore complies with section 3622(c)(10). Notice at 3.

The Postal Service states that the Agreement will not result in unreasonable harm to the marketplace. It contends that because the Postal Service and Australia Post are the designated operators for their respective countries, there are limited alternatives for receiving inbound single-piece Letter Post. Thus, the Postal Service argues that the instant Agreement will not cause competitive harm. *Id.* at 4-5. No party contends otherwise.

The Commission agrees. The Agreement should improve the financial position of the Postal Service, and there is no indication that the instant Agreement will cause unreasonable harm in the marketplace.

Functional equivalence. The Postal Service asserts that the Australia Post Agreement is functionally equivalent to the existing China Post 2010 Agreement, TNT Agreement, and HongKong Post Agreement. *Id.* at 1, n.1. To that end, it identifies various similarities among the agreements, *e.g.*, each involves rates for Letter Post tendered by a foreign post operator. *Id.* at 8. In addition, using the China Post 2010 Agreement for comparison purposes, the Postal Service identifies the term of the Agreement (two years) as a difference between the two agreements. Both the Postal Service and the Public Representative acknowledge the possibility that over a longer term, the cost characteristics of an agreement can deviate from other agreements used

for comparison. However, they do not see that possibility as significant enough to affect functional equivalence. *Id.* at 9; PR Comments at 3. The Commission agrees.

Request to exclude the proposed product from service performance measurement reporting. The Postal Service requests an exception from the requirement to report service performance for the instant agreement similar to the precursor agreements in Docket Nos. R2010-5, R2010-6, and R2011-4 filed under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. The Postal Service states that it will report information on this Agreement in the Annual Compliance Report. Notice at 6. Negotiated service agreements with substantially all components of the agreement included in the measurement of other products may be granted an exception from reporting pursuant to 39 CFR § 3055(a)(3). The exception is granted.

The Postal Service also requests a standing exemption to performance reporting requirements for all contracts added to the product Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1. *Id.* at 6, 10. It would appear that functionally equivalent agreements would qualify for the 3055(a)(3) exception. Future agreements that fall within the parameters of the Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product are excepted from the performance reporting requirements.

Other issues. Because the Postal Service has not identified a “baseline agreement,” the current agreements collectively serve as the measure for functional equivalence. The Commission may review this issue further in the event that the Postal Service does submit an agreement to be considered a baseline agreement.

The Postal Service states that the parties intend for January 1, 2012 to be the effective date of the Australia Post Agreement. If this date changes, the Postal Service shall notify the Commission of the effective date. The Postal Service shall promptly notify the Commission if the Australia Post Agreement terminates earlier than its proposed term, but no later than the actual termination date.

In addition, within 30 days of expiration, or early termination of the Australia Post Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Australia Post Agreement.

Conclusion. The Commission finds that the Australia Post Agreement falls within the parameters of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

VII. ORDERING PARAGRAPHS

It is ordered:

1. The Australia Post Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5 and R2010-6) product.
2. The Postal Service shall notify the Commission of the effective and termination dates of the Australia Post Agreement, as set forth in the body of this Order. If the Agreement terminates early, the Postal Service shall notify the Commission within 30 days of the termination date.
3. Within 30 days of expiration, or upon early termination of the Australia Post Agreement, the Postal Service shall file cost, volume, and revenue data associated with the agreement.
4. The Postal Service request that the Australia Post Agreement be excepted from service performance measurement reporting under 39 CFR § 3055.3(a)(3) is granted.
5. The Postal Service request that future agreements added to the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

(MC2010-35, R2010-5 and R2010-6) product be excepted from service performance measurement reporting under 39 CFR § 3055.3(a)(3) is granted.

By the Commission.

Ruth Ann Abrams
Acting Secretary